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8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 4443

12 **LEENA CELESTE BASURTO**
20065 Road 31
13 Madera, CA 93638

A C C U S A T I O N

14 **Pharmacist License No. RPH 61580**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about September 19, 2008, the Board of Pharmacy issued Pharmacist License
22 Number RPH 61580 to Leena Celeste Basurto (Respondent). The Pharmacist License was in full
23 force and effect at all times relevant to the charges brought herein and will expire on August 31,
24 2014, unless renewed.

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4. Section 4300 of the Code states:

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

• • •

5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

6. Section 482 of the Code states:

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division."

9. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

10. Section 4022 of the Code states

Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner

licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

11. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

12. Section 4301 of the Code states:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

...

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

...

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

...

(j) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.

...

1 (l) The conviction of a crime substantially related to the qualifications,
2 functions, and duties of a licensee under this chapter. The record of conviction
3 of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the
4 United States Code regulating controlled substances or of a violation of the
5 statutes of this state regulating controlled substances or dangerous drugs shall
6 be conclusive evidence of unprofessional conduct. In all other cases, the record
7 of conviction shall be conclusive evidence only of the fact that the conviction
8 occurred. The board may inquire into the circumstances surrounding the
9 commission of the crime, in order to fix the degree of discipline or, in the case
10 of a conviction not involving controlled substances or dangerous drugs, to
11 determine if the conviction is of an offense substantially related to the
12 qualifications, functions, and duties of a licensee under this chapter. A plea or
13 verdict of guilty or a conviction following a plea of nolo contendere is deemed
14 to be a conviction within the meaning of this provision. The board may take
15 action when the time for appeal has elapsed, or the judgment of conviction has
16 been affirmed on appeal or when an order granting probation is made
17 suspending the imposition of sentence, irrespective of a subsequent order under
18 Section 1203.4 of the Penal Code allowing the person to withdraw his or her
19 plea of guilty and to enter a plea of not guilty, or setting aside the verdict of
20 guilty, or dismissing the accusation, information, or indictment.

21 ...

22 (o) Violating or attempting to violate, directly or indirectly, or assisting in
23 or abetting the violation of or conspiring to violate any provision or term of this
24 chapter or of the applicable federal and state laws and regulations governing
25 pharmacy, including regulations established by the board or by any other state
26 or federal regulatory agency.

27 13. Section 4327 of the Code states that any person who, while on duty, sells, dispenses
28 or compounds any drug while under the influence of any dangerous drug or alcoholic beverages
shall be guilty of a misdemeanor.

14. Title 16, California Code of Regulations, section 1669 states in part:

19 (b) When considering the suspension or revocation of a facility or a
20 personal license on the ground that the licensee or the registrant has been
21 convicted of a crime, the board, in evaluating the rehabilitation of such person
22 and his present eligibility for a license will consider the following criteria:

23 (1) Nature and severity of the act(s) or offense(s).

24 (2) Total criminal record.

25 (3) The time that has elapsed since commission of the act(s) or offense(s).

26 (4) Whether the licensee has complied with all terms of parole, probation,
27 restitution or any other sanctions lawfully imposed against the licensee.

28 (5) Evidence, if any, of rehabilitation submitted by the licensee

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1 15. Title 16, California Code of Regulations, section 1770, states:

2 For the purpose of denial, suspension, or revocation of a personal or
3 facility license pursuant to Division 1.5 (commencing with Section 475) of the
4 Business and Professions Code, a crime or act shall be considered substantially
5 related to the qualifications, functions or duties of a licensee or registrant if to a
6 substantial degree it evidences present or potential unfitness of a licensee or
7 registrant to perform the functions authorized by his license or registration in a
8 manner consistent with the public health, safety, or welfare.

9 16. Health and Safety Code section 11170 states that no person shall prescribe,
10 administer, or furnish a controlled substance for herself.

11 17. Health and Safety Code section 11350, subdivision (a) states:

12 (a) Except as otherwise provided in this division, every person who
13 possesses (1) any controlled substance specified in subdivision (b) or (c), or
14 paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14),
15 (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b)
16 or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2)
17 any controlled substance classified in Schedule III, IV, or V which is a narcotic
18 drug, unless upon the written prescription of a physician, dentist, podiatrist, or
19 veterinarian licensed to practice in this state, shall be punished by imprisonment
20 pursuant to subdivision (h) of Section 1170 of the Penal Code.

21 COST RECOVERY

22 18. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
23 administrative law judge to direct a licentiate found to have committed a violation or violations of
24 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
25 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
26 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
27 included in a stipulated settlement.

28 DRUGS

19 19. Apidex, the brand name for phentermine, is a Schedule IV controlled substance under
20 California Health and Safety Code section 11057(f)(4), and is classified as a dangerous drug
21 pursuant to Business and Professions Code section 4022. It is used in the treatment of obesity.

22 20. Flexeril, the brand name for cyclobenzaprine, is a dangerous drug pursuant to
23 Business and Professions Code section 4022. It is used in the treatment of muscle pain.

24 21. Motrin, a brand name for ibuprofen, is a dangerous drug pursuant to Business and
25 Professions Code section 4022. It is used in the treatment of inflammation.

1 22. Norco, a brand name for hydrocodone with acetaminophen, is a Schedule III
2 controlled substance as designated by Health and Safety Code section 11056(e)(4) and is
3 classified as dangerous drug pursuant to section 4022. It is used in the treatment of moderate
4 pain.

5 23. Norflex, a brand name for orphenadrine, is a dangerous drug pursuant to Business and
6 Professions Code section 4022. It is used as a muscle relaxant.

7 24. ProSom, a brand name for estazolam, is a Schedule IV controlled substance under
8 California Health and Safety Code section 11057(d)(10), and is classified as a dangerous drug
9 pursuant to Business and Professions Code section 4022. It is used in the treatment of insomnia.

10 25. Soma, sold generically as carisoprodol, is a dangerous drug pursuant to Business and
11 Professions Code section 4022. It is used in the treatment of muscle pain.

12 26. Vicodin ES, a brand name for hydrocodone and acetaminophen, is a Schedule III
13 controlled substance as designated by Health and Safety Code Section 11055(e)(4), and is a
14 dangerous drug pursuant to Business and Professions Code section 4022.

15 27. Xanax, a brand name for alprazolam, is a Schedule IV controlled substance as
16 designated by Health and Safety Code section 11057(d)(1), and is a dangerous drug pursuant to
17 Business and Professions Code section 4022. Alprazolam tablets are indicated for the
18 management of anxiety disorder or the short-term relief of symptoms of anxiety.

19 **FACTS**

20 28. Respondent was employed as a pharmacist at Sav-On Pharmacy #6734 located in the
21 Albertson's store in Murrieta from November, 2010 until October 14, 2011. On or about
22 September 22, 2011, Sav-On's Loss Prevention Office was notified of possible missing controlled
23 substances from the pharmacy. Six covert cameras were subsequently installed in the pharmacy.
24 Following an inventory of controlled substances on or about September 26, 2011, it was
25 discovered that approximately 100 hydrocodone tablets were missing.

26 29. The surveillance cameras recorded several days when Respondent punched out on the
27 time clock and then re-entered the pharmacy for up to two hours after closing. On October 11,
28 2011, the surveillance cameras recorded Respondent entering the pharmacy after closing, working

1 off the clock, placing unidentified pills in her pocket and counting additional unidentified pills
2 and placing them in her personal bag.

3 30. An inventory of the controlled substances at Sav-On #6734 revealed the following
4 missing drugs on the days when Respondent worked:

5 Date Missing	6 Drug	7 Quantity
8 5/18/11	9 Hydrocodone	10 3 tablets
11 7/7/11	12 Hydrocodone	13 322 tablets
14 8/7/11	15 Alprazolam 0.25 mg	16 60 tablets
17 8/17/11	18 Hydrocodone	19 138 tablets
20 8/28/11	21 Alprazolam 0.25 mg	22 60 tablets
23 9/13/11	24 Hydrocodone	25 230 tablets
26 9/15/11	27 Alprazolam 0.5 mg	28 92 tablets
9/18/11	Hydrocodone	90 tablets
9/22/11	Hydrocodone	100 tablets
9/25/11	Alprazolam 0.5 mg	31 tablets
10/4/11	Hydrocodone	93 tablets
10/13/11	Phentermine 37.5 mg	33 tablets
10/13/11	Alprazolam 0.25 mg	65 tablets

20 31. On October 14, 2011, D.B. interviewed Respondent at Sav-On Pharmacy #6734.
21 Respondent admitted she falsified her Time and Attendance form to show she was off the clock
22 but later re-entered the pharmacy. Respondent was asked why she worked off the clock.
23 Respondent explained that it was because other employees were not working to the best of their
24 abilities, which resulted in Respondent being unable to complete her duties on time. Respondent
25 admitted she took pills from the pharmacy when she was off the clock and after the pharmacy had
26 closed. She admitted that she took the pills from the pharmacy for her personal use.

27 32. Respondent stated that she had been drinking more and that she was stealing drugs
28 from the pharmacy because she could not sleep. Respondent admitted she took generic Norco,

1 Xanax, Soma, estazolam, generic Ambien and generic Flexeril, oraphedrine and ibuprofen. She
2 stated she did not take Schedule II controlled substances because she knew those drugs were
3 closely watched. She usually took pills from the pharmacy once a week. She stated the first time
4 she stole medication was when she worked as a floater pharmacist at the Lake Elsinore pharmacy,
5 Sav-On Pharmacy #6798. Respondent worked at Sav-On Pharmacy #6798 four times between
6 late February and early March in 2011.

7 33. Respondent admitted she took and used generic Xanax 0.25 mg while at work. She
8 used the muscle relaxants she had taken from the pharmacy after work and on her days off.
9 Respondent stated that when customers tried to obtain early refills of medication, Respondent
10 changed the dispense date and kept the drugs herself.

11 34. After Respondent's admissions, D.B. contacted the Riverside County Sheriff's
12 Department. Deputies arrived at Sav-On Pharmacy #6734. D.B. advised the deputies of
13 Respondent's admissions and written statement. Respondent was transported to the Sheriff's
14 Station. While searching Respondent's property, 12 yellow oblong pills labeled "Watson 853"
15 were found in her make-up bag. The pills were identified as hydrocodone. In addition, the
16 deputy also found 10 white oval pills marked "603", which were identified as alprazolam.
17 Respondent was arrested and charged with violation of Penal Code section 459, burglary, Health
18 and Safety Code section 11350, possession of a controlled substance and Penal Code 503,
19 embezzlement.

20 35. On November 2, 2011, Supervalu Pharmacies sent the Board a copy of the DEA 106
21 Loss Report documenting the following drug loss due to employee pilferage from Sav-On #6798,
22 in Lake Elsinore:

Drug	Dosage and Form	Quantity Missing
Phentermine	15 mg capsule	20
Phentermine	30 mg capsule	15
Hydrocodone/APAP 10-325	Tablets	109
Phentermine	37.5 mg tablets	25

Alprazolam	0.5 mg tablet	122
Alprazolam	1 mg tablet	28
	TOTAL	319 tablets

36. On November 8, 2011, Supervalu Pharmacies sent the Board a copy of the DEA 106 Loss Report documenting the following drug loss due to employee pilferage from Sav-On #6734, in Murrieta:

Drug	Dosage and Form	Quantity Missing
Hydrocodone/APAP 7.5-750	tablet	114
Estazolam	2 mg tablet	30
Hydrocodone/APAP 10-325	Tablet	976
Phentermine	37.5 mg tablet	33
Alprazolam	0.25 tablet	212
Alprazolam	0.5 mg tablet	100
Apidex	37.5 mg tablet	100
	TOTAL	1,566 tablets

37. On November 9, 2011, a criminal complaint was filed against Respondent in *People of the State of California v. Leena Celeste Basurto*, Riverside County Superior Court Case No. SWF1102791, which charged Respondent with violation of Health and Safety Code section 11350, possession of a controlled substance, a felony (Count 1), and Penal Code 503, embezzlement, a misdemeanor (Count 2). On December 19, 2011, Respondent was convicted on her guilty plea. Judgment was deferred for Count 1 pursuant to Penal Code section 1000 and was required to enroll and employ with the court's diversion program. As to Count 2, Respondent was sentenced to 36 months probation, one day in custody, ordered to pay fines and fees of \$939.84, ordered to pay restitution and ordered to stay away from Albertson's supermarkets. On April 23, 2012, Respondent was terminated from the Penal Code 1000 diversion program, the probation order revoked and a bench warrant issued for Respondent.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(December 19, 2011 Conviction of Possession of Controlled Substances**
3 **And Embezzlement)**

4 38. Respondent is subject to disciplinary action under Code sections 490 and 4301,
5 subdivision (l), in that on December 19, 2011, in *People of the State of California v. Leena*
6 *Celeste Basurto*, Riverside County Superior Court Case No. SWF1102791, Respondent was
7 convicted on her guilty plea of violation of Health and Safety Code section 11350, possession of a
8 controlled substance, a crime that is substantially related to the qualifications, functions and
9 duties of a pharmacist, as more fully set forth in paragraphs 28-37 and incorporated herein as
10 though set forth in full.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct – Dishonesty)**

13 39. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
14 for unprofessional conduct in that Respondent, while employed as a pharmacist at Sav-On
15 pharmacies, committed acts involving dishonesty, fraud and deceit, when she falsified her Time
16 and Attendance forms to show she was off the clock but later re-entered the pharmacy and stole
17 controlled substances and/or dangerous drugs from the pharmacy for her personal use, as more
18 fully set forth in paragraphs 28-37 and incorporated herein as though set forth in full.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct - Self-Administration of a Controlled Substance)**

21 40. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
22 in conjunction with Health and Safety Code section 11170, for unprofessional conduct in the self-
23 administration of a controlled substance, in that Respondent, while employed as a pharmacist at
24 Sav-On pharmacies, stole controlled substances from her employer and self-administered these
25 drugs, as more fully set forth in paragraphs 28-37 and incorporated herein as though set forth in
26 full.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Use of a Controlled Substance)**

3 41. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),
4 for unprofessional conduct for administering controlled substances to herself, or using any
5 dangerous drug, to the extent or in a manner as to be dangerous to herself or to the extent the use
6 impairs Respondent's ability to practice pharmacy safely, as more fully set forth in paragraphs
7 28-37 and incorporated herein as though set forth in full.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct – Possession of Controlled Substances)**

10 42. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
11 in conjunction with Code section 4060 and Health and Safety Code section 11350, for
12 unprofessional conduct in that Respondent unlawfully possessed controlled substances.
13 Respondent, while employed as a pharmacist at Sav-On pharmacies, stole controlled substances
14 from her employer for her personal use and on October 14, 2011 was found to be in possession of
15 hydrocodone and alprazolam, as more fully set forth in paragraphs 28-37 and incorporated herein
16 as though set forth in full.

17 **SIXTH CAUSE FOR DISCIPLINE**

18 **(Dispensing While Under the Influence of a Controlled Substance)**

19 43. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),
20 in conjunction with section 4327, in that Respondent dispensed drugs during her shift as a
21 pharmacist at Sav-On pharmacy while under the influence of controlled substances, as more fully
22 set forth in paragraphs 28-37 and incorporated herein as though set forth in full.

23 **DISCIPLINE CONSIDERATIONS**

24 44. To determine the degree of discipline, if any, to be imposed on Respondent,
25 Complainant alleges that on or about September 12, 2011, in a prior action, the Board of
26 Pharmacy issued Citation Number CI 2011 49459 to Respondent for failing to notify the Board
27 within 30 days of her termination from her employment as the pharmacist-in-charge at CVS
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1 Pharmacy #9159 on March 10, 2010. This was a violation of Code section 4101, subdivision (a).
2 This Citation is now final and is incorporated by reference as if fully set forth.

3 **PRAYER**

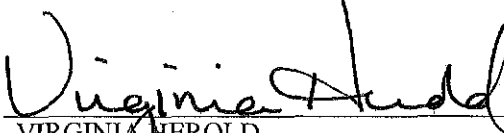
4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board of Pharmacy issue a decision:

6 1. Revoking or suspending Pharmacist License Number RPH 61580, issued to Leena
7 Celeste Basurto;

8 2. Ordering Leena Celeste Basurto to pay the Board of Pharmacy the reasonable costs of
9 the investigation and enforcement of this case, pursuant to Business and Professions Code section
10 125.3;

11 3. Taking such other and further action as deemed necessary and proper.

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13
14 DATED: 3/21/13


15 VIRGINIA HEROLD
16 Executive Officer
17 Board of Pharmacy
18 Department of Consumer Affairs
19 State of California
20 Complainant

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